

Affidavit as to consideration.

An affidavit held insufficient. It is essential that the affidavit should be endorsed on the mortgage and recorded with it. The fact that the oath was taken can not be established otherwise. *Reiff v. Eshleman*, 52 Md. 587.

Whether the affidavit is made or not is immaterial as between the parties to the mortgage, and those claiming through or under the mortgagee; *contra* as to subsequent creditors and purchasers. *Hartsock v. Russell*, 52 Md. 627; *Cockey v. Milne*, 16 Md. 207.

Although the affidavit required by this section is wanting, or defective, if the lessee has actual notice of the mortgage, he takes the property subject thereto. *Russum v. Wanser*, 53 Md. 98; *Reiff v. Eshelman*, 52 Md. 588; *Johnson v. Canby*, 29 Md. 220; *Phillips v. Pearson*, 27 Md. 257.

An affidavit held to be *bona fide* and valid, notwithstanding the fact that a portion of the mortgage debt was usurious interest. *Smith v. Myers*, 41 Md. 432.

Affidavit held to be in substantial compliance with this section, and made before a proper officer. *Stanhope v. Dodge*, 52 Md. 490.

Affidavit as to interest.

Where there is no interest provided for in the mortgage, the second oath need not be made. Interest, however, can not be covered up as principal. *Salabes v. Castalburg*, 98 Md. 655.

Generally.

A deed held to be a mortgage within the meaning of this section. The sections relative to execution and recording, refer to a technical mortgage and not to deeds of trust. *Stanhope v. Dodge*, 52 Md. 490; *Shidy v. Cutter*, 54 Md. 677. And see *Snowden v. Pitcher*, 45 Md. 265; *Carson v. Phelps*, 40 Md. 96; *Stockett v. Holliday*, 9 Md. 499; *Charles v. Clagett*, 3 Md. 82.

Where the mortgage has been duly sworn to and recorded, it has the same effect as if the mortgagee had been put in possession of the mortgaged property. *Cahoon v. Miers*, 67 Md. 579.

Purpose of this section—a substantial compliance is sufficient. *Marlow v. McCubbin*, 40 Md. 136; *Nelson v. Hagerstown Bank*, 27 Md. 73; *Phillips v. Pearson*, 27 Md. 256; *Cockey v. Milne*, 16 Md. 207. *Cf. Denton v. Griffith*, 17 Md. 304.

As against creditors and purchasers, or assignees of the mortgagor seeking to redeem, the English doctrine of tacking or consolidation is inconsistent with this section. *Brown v. Stewart*, 56 Md. 431.

Cited but not construed in *Brown v. Freestone, etc., Co.*, 55 Md. 551; *Van Rისwick v. Goodhue*, 50 Md. 61.

See sec. 52 and notes.

See art. 81, sec. 190.

1904, art. 21, sec. 31. 1888, art. 21, sec. 31. 1860, art. 24, sec. 30. 1856, ch. 113.

33. The affidavit required by the preceding section may be made by one of several mortgagees, and shall have the same effect as if made by all; or the said affidavit may be made by any agent of a mortgagee; and when made by an agent, he shall, in addition to the affidavit above mentioned, make affidavit, to be endorsed upon the mortgage, that he is agent of the mortgagee or mortgagees, or some one of them; which affidavit shall be sufficient proof of such agency; and the president, or other officer of a corporation, or the executor of the mortgagee may make such affidavit.

An affidavit held to have been made in due form by the secretary of a corporation. *Frostburg Bldg. Assn. v. Hamill*, 55 Md. 316.

The act of 1846, ch. 271, and the act of 1847, ch. 305, held to have been sufficiently complied with. *McKim v. Mason*, 3 Md. Ch. 186.

Cited but not construed in *Van Rისwick v. Goodhue*, 50 Md. 61.

See art. 81, sec. 190.